

U.S. Department of Energy
Instrument of Agreement
DE-XX09-XXXXXXXX

Part I – General and Administrative Information

Article 1 - Purpose

The terms and conditions contained in this Instrument of Agreement (“Agreement”) between ***** and the United States Department of Energy (“DOE”) shall govern the Standing List and any resulting Matching Orders to provide specialized legal services to DOE, Office of the General Counsel (“OGC”), in the evaluation of projects seeking loan guarantees from DOE pursuant to Title XVII of the Energy Policy Act of 2005, Pub. L. 109-58 (“Title XVII”), and 10 Code of Federal Regulation Part 609 (the “Final Regulations”). This Agreement establishes the terms and conditions under which services may be provided by Legal Consultants as Project Transactional Counsel to OGC under a Matching Order, but does not obligate DOE to enter into any Matching Orders for specialized legal services with any Legal Consultant. All of the terms and conditions in this Agreement shall be incorporated by reference in each Matching Order entered into between DOE and a Project Transactional Counsel. Both DOE and ***** agree that this Agreement is not a contract, basic agreement or a basic ordering agreement under the Federal Acquisition Regulation nor is it a grant or cooperative agreement under 10 CFR 600 or a technology investment agreement under 10 CFR 603. In addition, the Federal Acquisition Regulation does not apply to the Agreement or any Matching Orders. All services required by OGC will be obtained through a Matching Order(s) issued in accordance with the procedures in this Agreement. DOE reserves the right to make future modifications to the processes outlined both in this Agreement and any resulting Matching Orders.

Article 2 - Definitions

10 CFR 600 – The Department of Energy’s financial assistance rules, which do not apply to this Agreement or any Matching Orders.

Applicant – Any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other business entity or governmental non-Federal entity that has submitted an Application (as defined in Section 609.2 of the Final Regulations) to DOE and has the authority to enter into a Loan Guarantee Agreement (as defined in Section 609.2 of the Final Regulations) with DOE.

Best Value – Basis by which a Legal Consultant on the Standing List will be selected for a Matching Order that will provide the greatest overall benefit to the Government in response to the RSCAP. The SCAP that has been determined to be the most advantageous to DOE considering price and non-price factors will be selected for award. The evaluation criteria for determining best value will be specified in each RSCAP issued by DOE.

Borrower – Any Applicant who enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations (as defined in Section 609.2 of the Final Regulations).

Legal Consultant – An Invitee that has been determined to be capable of providing to DOE the services identified in Invitation DE-SS01-08CF00001 and that has signed an Instrument of Agreement. Legal Consultants on the Standing List will be eligible to compete to provide the services required under Matching Orders.

FAR – The Federal Acquisition Regulation, Title 48 of the Code of Federal Regulations; the FAR does not apply to this Agreement or any Matching Orders.

Project Transactional Counsel – A Legal Consultant selected by DOE to provide specialized legal services to OGC under a Matching Order for a particular project.

Instrument of Agreement – The written agreement entered into by DOE with each of the Legal Consultants that contains (1) terms and conditions applying to future Matching Orders between the parties during its term; (2) a description of supplies or services that may be provided; and (3) methods for pricing, issuing, and delivering future Matching Orders. The Instrument of Agreement is not a contract, basic agreement, or basic ordering agreement under the FAR. Entering into an Instrument of Agreement with DOE does not guarantee that the Legal Consultant will receive a Matching Order.

Invitee - All law firms interested in responding to the Invitation DE-SS01-08CF00001 issued July 16, 2008, individually or as a Team.

Matching Order – The written agreement used to place a binding legal relationship between a Project Transactional Counsel and DOE with respect to a particular project. The Matching Order will not provide for payment by DOE for any fees and expenses incurred by a Project Transactional Counsel, in connection with the project. The Project Transactional Counsel and the Project Sponsor and/or Borrower must execute a Sponsor Payment Letter.

Project Sponsor – Any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or other business entity that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five (5) percent or greater interest in the proposed Eligible Project (as defined in Section 609.2 of the Final Regulations) or the Applicant.

Request for Statement of Capability, Availability, and Price (“RSCAP”) – a request from DOE that will outline the Matching Order process and contain a description of the specific services being requested for the Matching Order, SCAP submission instructions, and evaluation criteria.

Sponsor Payment Letter – A written agreement between the Project Transactional Counsel and the Project Sponsor and/or Borrower for payment of the services provided to, and expenses incurred on behalf of, DOE under a Matching Order.

Standing List – The standing list is comprised of those Invitees who have submitted Statements of Expertise and Resources in accordance with this Invitation and who have been determined by DOE to be capable of providing to DOE the services identified in this Invitation. Law firms will be placed on the Standing List upon execution of an Instrument of Agreement and will become Legal Consultants.

Statement of Capability, Availability, and Price (“SCAP”) – Submission by a Legal Consultant on the Standing List in response to the RSCAP.

Teaming Arrangements – An arrangement in which two (2) or more law firms agree to work jointly and cooperatively as a potential Legal Consultant. The members of a Teaming Arrangement shall be referred to, individually, as a “Teaming Member” and, collectively, as a “Team.”

Article 3 - Order of Precedence

The Matching Orders will incorporate by reference the required and applicable terms and conditions agreed upon in the Agreement. As applicable, additional terms and conditions may be added to the Matching Order. In the event that a conflict between a Matching Order and an Agreement occurs, the Agreement shall control.

A Sponsor Payment Letter shall be negotiated and executed between a Project Transactional Counsel and a Project Sponsor and/or Borrower that demonstrates creditworthiness acceptable to the Project Transactional Counsel prior to any work being performed by the Project Transactional Counsel under a Matching Order. DOE shall not be a party to the Sponsor Payment Letter under any circumstances.

Article 4 - Duration of Standing List Placement

All Legal Consultants shall remain on the Standing List until the earlier of (i) a Legal Consultant provides written notification to the DOE Contracting Officer requesting removal from the Standing List; (ii) DOE eliminates the Standing List; (iii) DOE terminates the Legal Consultant’s Agreement or Matching Order for convenience or cause; or (iv) a Legal Consultant fails to deliver within 30 days of a request by DOE a certification that the Legal Consultant continues to have the ability to provide, at a minimum, the services identified in Attachment A, Statement of Work.

Article 5 - Instrument of Agreement Review/Revision

This Agreement shall be reviewed annually, before the anniversary of its effective date and revised as necessary to conform to the current changes in statutes, regulations, Executive Orders, or other appropriate matters.

Article 6 - Multiple Instruments of Agreements

Instruments of Agreements for the services described herein will be established with multiple Legal Consultants. Matching Orders will be awarded on a competitive basis. DOE shall continue to receive Statements of Expertise and Resources from Invitees after the initial Agreements are established and reserves the right to issue additional Agreements to Invitees.

Article 7 - Availability/Obligation of Funds

No funds will be obligated or made available for this Agreement by DOE. DOE shall have no legal liability for any payment purposes under this Agreement.

Article 8 - Scope of Work

The Legal Consultant agrees to furnish such services as described in Attachment A as DOE may order under a Matching Order during the term of this Agreement. Any such Matching Order shall become a binding contract upon DOE and the Legal Consultant entering into a Matching Order. All Matching Orders shall reference the number of this Agreement. The DOE Legal Consultant Standing List Administrator listed in **Article 11 - Legal Consultant Standing List Administrator** is available to clarify the understanding of the Agreement.

Article 9 - Delivery/Payment

Work shall be completed and delivered as stated in each individual Matching Order. Payment for completed services will be made in accordance with the Sponsor Payment Letter.

Article 10 - Limitation of Government Liability

DOE's obligation under any Standing List is to use its reasonable efforts to perform in accordance with the Agreement. Under no circumstances shall DOE be liable to a Legal Consultant as a result of the conduct of a Project Sponsor, a Borrower and/or any of their or DOE's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided in the Agreement; neither shall DOE be liable to a Legal Consultant for any damages due, in whole or in part, to causes beyond the control and without the fault or negligence of DOE, including but not restricted to, acts of God or public enemies, acts of the U.S. Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

Article 11 - Legal Consultant Standing List Administrator

DOE Legal Consultant Standing List Administrator

Name: Richard Bonnell

Telephone number: 202-287-1508

E-mail address: richard.bonnell@hq.doe.gov

Address: U.S. Department of Energy

Headquarters Procurement Services

Division B, MA-642.2

1000 Independence Avenue, S.W.

Washington, D.C. 20585-1615

Legal Consultant's Standing List Administrator

Name: XXX

Telephone number: XXX

E-mail address:

Address: XXXX

Each Legal Consultant is responsible for ensuring that the information for its Standing List Administrator is up to date.

Article 12 - Modification Authority

Notwithstanding any of the other articles of this Agreement, the Contracting Officer shall be the only individual authorized to modify any term or condition of the Agreement and any resulting Matching Orders.

Article 13 - Termination of Instrument of Agreement for Convenience or Cause

Termination for the Government's Convenience. The Government reserves the right to terminate this Agreement, or any part thereof, for its sole convenience. Due to the no cost nature of the Agreement and any resulting Matching Order, the Government does not owe the Legal Consultant any amounts due under a Sponsor Payment Letter if the Agreement is terminated for convenience.

Termination for Cause. The Government may terminate this Agreement, or any part hereof, for cause in the event of any default by the Legal Consultant or if the Legal Consultant fails to comply with any of the Agreement's terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Legal Consultant for any amounts due under a Sponsor Payment Letter, and the Legal Consultant shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for cause, such termination shall be deemed a termination for the Government's convenience.

Article 14 - Central Contractor Registration

The Central Contractor Registration (CCR) is the primary registrant database for the U.S. Federal Government. All Legal Consultants selected by DOE are required to register in the CCR database prior to executing this Agreement. Legal Consultants may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

Article 15 - Matching Order Process

(a) General

As Applications for loan guarantees submitted in response to DOE solicitations are received and reviewed by DOE, DOE contemplates retaining Legal Consultants to serve as DOE's Project Transactional Counsel advising in the work areas set forth in the Statement of Work, Attachment A, on one (1) or more projects, as applicable.

DOE will conduct a competitive process of matching a Legal Consultant as a Project Transactional Counsel (1) with a loan guarantee project and/or (2) for specific work areas identified in an RSCAP.

(b) Request for Statements of Capability, Availability, and Price

The Contracting Officer will provide Legal Consultants the opportunity to participate in each Matching Order process. The Contracting Officer or his/her designated representative shall submit a Request for Statements of Capability, Availability, and Price ("RSCAP") to all Legal Consultants on the Standing List. The RSCAP may be issued to the Legal Consultant's Standing List Administrator listed in **Article 11 - Legal Consultant Standing List Administrator** via facsimile, electronic mail or any other means the Contracting Officer or his/her designated representative deems appropriate. The RSCAP will outline the Matching Order process and contain a description of the specific services being requested for the Matching Order, submission instructions, and evaluation criteria. The Contracting Officer may use streamlined procedures for the competitive Matching Order process, including oral presentations. Legal Consultants shall submit Statements of Capability, Availability, and Price ("SCAP") in accordance with the instructions provided in the RSCAP. A Legal Consultant on the Standing List that responds to an RSCAP will be required to submit a disclosure of conflicts of interest statement along with its SCAP.

(c) Evaluation

The RSCAP will outline the evaluation factors that will be used when making a Matching Order decision, which may include, but is not limited to the Legal Consultant's experience and capabilities, past performance, availability, staffing, and price. DOE will also conduct a conflicts of interest review based on the disclosure of conflicts of interest statement submitted by a Legal Consultant with respect to a Project Sponsor and/or Borrower.

(d) Selection

In accordance with the competitive criteria specified in a RSCAP, DOE will select a Project Transactional Counsel representing the best value to DOE to provide the needed services with respect to a project. A Matching Order will be issued to the Legal Consultant whose SCAP is the most advantageous to DOE while offering the best value considering price and non-price factors, as applicable. Project Transactional Counsel will be required to execute conflicts of interest and nondisclosure acknowledgments prior to performing any work under a Matching Order.

The terms and conditions included in this Agreement shall apply to all Matching Orders placed with Legal Consultants on the Standing List.

Article 16 - Organizational Conflicts of Interest

Each Legal Consultant responding to an RSCAP will be required to submit a disclosure of conflicts of interest statement along with its SCAP. A Project Transactional Counsel has a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest.

1) An organizational conflict of interest (“OCI”) means that because of other activities and relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might otherwise be impaired, or a person has an unfair competitive advantage.

It is not the intention of DOE to prevent a Legal Consultant from participating in a competitive Matching Order process due to a perceived OCI. DOE Contracting Officers are fully empowered to evaluate each potential OCI scenario based upon the applicable facts and circumstances.

2) Potential organizational conflict of interest. The following examples illustrate situations in which questions concerning OCI may arise. They are not all inclusive.

(a) Unequal access to information. Access to “nonpublic information” as part of the performance of a Matching Order could provide a Project Transactional Counsel a competitive advantage in a later competition for another Matching Order or contract. Such an advantage could easily be perceived as unfair by a competing Legal Consultant who is not given similar access to the relevant information. If the requirements of the Matching Order anticipate the potential Project Transactional Counsel may have access to nonpublic information, the potential Project Transactional Counsel should be required to submit and negotiate an acceptable mitigation plan.

(b) Biased ground rules. In the course of performing a Matching Order, a Project Transactional Counsel has in some fashion established important “ground rules” for another Matching Order or contract, where the same Project Transactional Counsel may be a competitor. For example, a Project Transactional Counsel may have drafted the statement of work, specifications, or evaluation criteria of a future DOE procurement. DOE’s primary concern in this case is that a Project Transactional Counsel so situated could slant key aspects of a procurement in its own favor, to the unfair disadvantage of competing vendors. If the requirements of the Matching Order indicate the potential Project Transactional Counsel may be in a position to establish, or may have important ground rules, including but not limited to those described herein, the potential Project Transactional Counsel should be required to submit and negotiate an acceptable mitigation plan.

(c) Impaired objectivity. In the course of performing a Matching Order, a Project Transactional Counsel is placed in a situation of providing assessment and evaluation findings over itself, or another business division, or subsidiary of the same corporation, or other entity with which it has a significant financial relationship. DOE’s concern in this case is that the Project Transactional Counsel’s ability to render impartial advice to DOE could appear to be undermined by the Project Transactional Counsel’s financial or other business relationship to the entity whose work product is being assessed or evaluated. In these situations, a “walling off” of lines of communication may well be insufficient to remove the perception that the objectivity of the contractor has been tainted. If the

requirements of the Matching Order indicate that the potential Project Transactional Counsel may be in a position to provide evaluations and assessments of itself or corporate siblings, or other entities with which it has a significant financial relationship, the affected Legal Consultant should provide a mitigation plan that includes recusal by the Legal Consultant from the affected Matching Order. Such recusal might include divestiture of the work to another third-party Legal Consultant.

3) Disclosure by Legal Consultants responding to an RSCAP:

(a) Legal Consultants should provide information which concisely describes all relevant facts concerning any past, present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under a Matching Order and bearing on whether a Legal Consultant has a possible OCI.

(b) If the Legal Consultant does not disclose any relevant facts concerning an OCI, the Legal Consultant, by submitting a SCAP or signing a Matching Order, warrants that to its best knowledge and belief no such facts exist relevant to possible OCI.

(c) A Project Transactional Counsel has a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If a Project Transactional Counsel learns of such conflict, the Project Transactional Counsel is expected to report it immediately to the Contracting Officer and perform no more duties under the Matching Order until the Project Transactional Counsel receives instructions on the matter.

4) Remedies for Nondisclosure. The following are possible remedies if a Legal Consultant refuses to disclose, or misrepresents, any information regarding a potential OCI:

(a) Refusal to provide adequate information may result in disqualification for issuance of a Matching Order.

(b) Nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the Legal Consultant for issuance of a Matching Order.

(c) Termination of the Matching Order, if the nondisclosure or misrepresentation is discovered after a Matching Order has been issued.

(d) Disqualification from subsequent Matching Orders or contracts or revocation by DOE of such Legal Consultant's placement on the Standing List.

(e) Other remedial action as may be permitted or provided by all applicable laws or in the Matching Order.

Part II – Matching Order Terms and Conditions

Article 17 - Items Being Acquired

The Project Transactional Counsel shall furnish all personnel, facilities, equipment, materials, supplies, and services necessary as described in the Matching Order. DOE, in accordance with the procedures outlined herein, will direct specific detailed performance requirements (including any necessary reporting requirements) in the Matching Order.

Article 18 - Availability/Obligation of Funds

No funds will be obligated or made available for any Matching Orders by DOE. DOE shall have no legal liability for any payment purposes under this Matching Order.

Article 19 - Limitation of Liability

DOE's obligation under any Matching Order is to use its reasonable efforts to perform in accordance with the terms and conditions of the Matching Order. Under no circumstances shall DOE be liable to a Project Transactional Counsel as a result of a Project Sponsor, a Borrower, and/or any of their or DOE's contractors or subcontractors for indirect, consequential, or special damages arising from such conduct, except as provided by a Matching Order; neither shall DOE be liable to a Project Transactional Counsel for any damages due in whole or in part to causes beyond the control and without the fault or negligence of DOE, including but not restricted to, acts of God or public enemies, acts of the U.S. Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

Article 20 - Indemnification

DOE is limited by the Anti-deficiency Act from undertaking to pay any amounts that are not specifically obligated. Accordingly, DOE may not provide open-ended indemnities or agreements to reimburse third-party costs to any person. A Project Transactional Counsel shall always exclude DOE as an indemnifying party.

Article 21 - Responsibilities of the Parties

(a) Each Matching Order constitutes a contract between the Project Transactional Counsel and DOE. In consideration of the performance under each Matching Order, the Project Transactional Counsel shall be paid the consideration identified in the Sponsor Payment Letter, which consideration shall constitute complete payment for all services furnished and accepted pursuant to the Matching Order.

(b) Fees and expenses incurred by a Project Transactional Counsel in connection with services it renders to DOE pursuant to a Matching Order shall be payable only by the Project Sponsor and/or the Borrower under all circumstances, without recourse to DOE by the Project Transactional Counsel, Project Sponsor, or Borrower. A Sponsor Payment Letter shall be negotiated by the Project Transactional Counsel with the Project Sponsor and/or Borrower and

shall be executed by the Project Sponsor and/or Borrower and the Project Transactional Counsel prior to any work being performed by the Project Transactional Counsel under the Matching Order; execution of the Sponsor Payment Letter by the Project Transactional Counsel shall indicate acceptance by the Project Transactional Counsel of the creditworthiness of the Project Sponsor and/or Borrower executing such Sponsor Payment Letter.

(c) DOE will proceed with evaluating and processing a loan guarantee application only upon a Project Sponsor's entering into a Sponsor Payment Letter with a Project Transactional Counsel selected through a competitive Matching Order process by DOE to provide services to DOE on the Project Sponsor's project. The Sponsor Payment Letter shall be subject to review by DOE for the purposes of assuring that DOE is not in any way liable for the payment of any fees and expenses specified and for conformity with other applicable guidelines. A Matching Order may be terminated by DOE for convenience or cause in accordance with **Article 53 - Termination for Convenience or Cause** if a Sponsor Payment Letter is not executed. In the event that a Project Sponsor fails to comply with the provisions of such Sponsor Payment Letter, DOE may stop work on the Project Sponsor's Application, reject the Project Sponsor's Application and/or order, through DOE's Contracting Officer, Project Transactional Counsel to stop work on the project.

(d) Notwithstanding the payment obligation of the Project Sponsor and/or Borrower with regard to the services rendered and expenses incurred by a Project Transactional Counsel in connection with a Matching Order, DOE is the Project Transactional Counsel's sole client. Each Project Transactional Counsel shall specifically disclaim or cause to be disclaimed any inference of confidential, fiduciary or other client relationship between the Project Sponsor or Borrower of a given project and the Project Transactional Counsel, as a result of the Sponsor Payment Letter or payments made by the Project Sponsor and/or Borrower in accordance with the Sponsor Payment Letter, and shall not allow the Project Sponsor or Borrower to interfere with DOE's relationship with the Project Transactional Counsel, including DOE's ability, in its sole discretion, to terminate such Project Transactional Counsel.

(e) The Project Transactional Counsel will provide DOE statements identifying in detail the work performed by task or document, as applicable, during the relevant period, the total time billed as a firm and by each employee, subcontractor or consultant assigned by the Project Transactional Counsel to work on the Matching Order, as well as aggregate amounts incurred to date for the purpose of correctness and completeness verification of these statements, as well as for redacting any privileged attorney-client information, prior to submitting these statements or any invoices to the Project Sponsor and/or Borrower.

Article 22 - Sponsor and/or Borrower Payment Letter ("Sponsor Payment Letter")

DOE shall not be financially liable to the Project Transactional Counsel for any services rendered or expenses incurred in connection with a Matching Order pursuant to a Sponsor Payment Letter under any circumstances whatsoever, including whether a loan guarantee application is approved or a closing occurs or under circumstances in which the Project Sponsor or Borrower fails to pay such fees and expenses. The Sponsor Payment Letter shall incorporate the following provisions and shall be submitted to DOE prior to execution to confirm conformity with this article.

- (a) DOE will not be responsible for any of the Project Transactional Counsel's fees and expenses attributable to representing DOE in connection with the project, including post-closing issues and DOE requirements, and the Project Transactional Counsel agrees that it shall look only to the Project Sponsor and/or Borrower, for payment of such fees and expenses. The Project Sponsor and/or Borrower is responsible for payment of all fees of and expenses associated with the Project Transactional Counsel under all circumstances, without recourse to DOE by the Project Transactional Counsel, the Project Sponsor, or Borrower.
- (b) The Project Transactional Counsel will provide DOE statements identifying in detail the work performed by task or document, as applicable, during the relevant period, the total time billed as a firm and, as applicable, by each employee, subcontractor or consultant assigned by the Project Transactional Counsel to work on the Matching Order, as well as aggregate amounts incurred to date for the purpose of correctness and completeness verification of these statements, prior to submitting these statements or any invoices to the Project Sponsor and/or Borrower.
- (c) The Project Transactional Counsel will provide to DOE, prior to presentment to the Project Sponsor and/or Borrower, invoices so that they can be reviewed by DOE with a view to possible redaction of privileged, sensitive, or confidential information.
- (d) Notwithstanding the Project Sponsor and/or Borrower's payment obligation to the Project Transactional Counsel with regard to the services rendered and expenses incurred as Project Transactional Counsel, the attorney-client relationship is solely between DOE, as the client, and the Project Transactional Counsel and any other counsel or consultants subcontracted or retained by the Project Transactional Counsel in connection with the Matching Order. There shall be no inference of confidentiality, fiduciary, or other client relationship between the Project Transactional Counsel and the Project Sponsor and/or Borrower, as a result of the Sponsor Payment Letter or payments made in accordance with the terms of the Sponsor Payment Letter by the Project Sponsor and/or Borrower. The parties to the Sponsor Payment Letter shall disavow any confidentiality, fiduciary or other client relationship. Additionally, the Project Sponsor and/or Borrower shall also not interfere with DOE's relationship with the Project Transactional Counsel. The parties to the Sponsor Payment Letter shall affirm that no one, including the Project Sponsor and/or Borrower, shall interfere with the attorney-client relationship between DOE, as the client, and the Project Transactional Counsel and any other counsel or other consultants subcontracted or retained by the Project Transactional Counsel in connection with the Matching Order.
- (e) The Sponsor Payment Letter shall be subject to review for the purposes of assuring that DOE is not in any way liable for the payment of any fees and expenses. The parties to the Sponsor Payment Letter acknowledge that they will not amend, modify, alter, or change in any way this Sponsor Payment Letter prior to notifying DOE and submitting any amendment, modification, alteration, or change to the Sponsor Payment Letter to DOE.

A sample Sponsor Payment Letter is attached as Attachment B. Attachment B is attached merely for illustrative purposes. Each Sponsor Payment Letter shall be negotiated between a Project Transactional Counsel and Project Sponsor and/or Borrower. DOE does not make any representations as to the validity and/or the enforceability of the language in such sample.

Article 23 - Term of Matching Order

The term of this Matching Order is [] months after the effective date of this Matching Order.

Article 24 - Exercise of Option(s)

DOE has included an option(s) to purchase additional services and to extend the term of this Matching Order. In order to demonstrate the value it places on quality performance, DOE has provided a mechanism for continuing a contractual relationship with a successful Project Transactional Counsel that performs at a level which meets or exceeds quality performance expectations as communicated to the Project Transactional Counsel, in writing by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Project Transactional Counsel's performance under this Matching Order.

Article 25 - Delivery and Performance Schedule

The Project Transactional Counsel shall comply with the delivery and performance schedule set forth in each Matching Order and in accordance with the Statement of Work.

Article 27 - Principal Place of Performance

As specified in each Matching Order.

Article 28 - Statement of Work

Each Matching Order shall contain a detailed Statement of Work, including specific deliverables.

Article 29 - Reporting Requirements

Reporting Requirements will be contained in each RSCAP and any resulting Matching Order.

Article 30 - Marking

Each package, report, or other deliverable shall be accompanied by a letter or other document which:

- (1) Identifies the Matching Order by number under which the item is being delivered;
- (2) Identifies the deliverable Item Number or Reporting Requirement that requires the delivered item(s); and

(3) Indicates whether the Project Transactional Counsel considers the delivered item to be a partial or full satisfaction of the requirement.

Article 31 - Inspection and Acceptance

The Contracting Officer or the duly appointed representative will perform inspection and acceptance of services to be provided. The services shall be of the professional level and reflect expertise commensurate with standard commercial or industrial practice for activities of those required under a Matching Order and shall be suitable for their intended purpose. DOE has the right to inspect and test all services and deliverables called for by the Matching Order, to the extent practicable at all times and places during the term of the Matching Order.

In the event of rejection of any report or deliverable, the Project Transactional Counsel shall be notified in writing and shall have ten (10) working days, unless otherwise specified by DOE, from the date of issuance of such notification to correct the deficiencies and resubmit the report/deliverable. When the defects in services cannot be corrected by reperformance, DOE may require the Project Transactional Counsel to take necessary action to ensure that future performance conforms to Matching Order requirements;

For the purpose of this article, _____ is the authorized representative of the Contracting Officer.

Article 32 -Stop Work Order

(a) The Contracting Officer may, at any time including if the Project Sponsor or Borrower fails to make payments under the Sponsor Payment Letter, by written order to the Project Transactional Counsel, require the Project Transactional Counsel to stop all, or any part, of the work called for by this Matching Order for a period of 90 days after the order is delivered to the Project Transactional Counsel, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this article. Upon receipt of the order, the Project Transactional Counsel shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Project Transactional Counsel, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Termination for Convenience or Cause Article contained in the Matching Order.

(b) If a stop-work order issued under this article is canceled or the period of the order or any extension thereof expires, the Project Transactional Counsel shall resume work. The Contracting Officer shall adjust the delivery schedule, as necessary, and the Matching Order shall be modified, in writing, accordingly, if—

- (1) The stop-work order results in an increase in the time required for the performance of any part of this Matching Order; and
- (2) The Project Transactional Counsel requests an adjustment to the delivery schedule within 30 days after the end of the period of work stoppage.

(c) If a stop-work order is not canceled and the work covered by the Matching Order is terminated by DOE for the convenience or cause, in accordance with **Article 53 - Termination for Convenience or Cause**, due to the no cost nature of the Matching Order, the Government does not owe the Project Transactional Counsel any amounts due under a Sponsor Payment Letter.

Article 32 - Correspondence Procedures

All correspondence submitted by the Project Transactional Counsel (except for invoices and reports) shall be subject to the following procedures:

(a) Technical correspondence. Technical correspondence concerning performance of this Matching Order shall be addressed to:

Name: XXX
Telephone number: XXX
E-mail address: XXX
Address: XXXX

(b) Non-technical administrative correspondence. All correspondence, other than technical correspondence, shall be addressed to:

Name: XXX
Telephone number: XXX
E-mail address:XXX
Address: XXXX

(c) Subject line(s). All correspondence shall contain a subject line commencing with the Matching Order number (as specified in each order), as illustrated below:

“SUBJECT: Matching Order No. [insert number], [insert subject topic, *e.g.*, “Deliverables Under Task # 2”).”

Article 33 - Contracting Officer's Representative

A Contracting Officer's Representative (COR) will be designated for each Matching Order in order to represent the Contracting Officer in the technical phases of the work. The COR is not authorized to change any of the terms and conditions of the Matching Order. Changes in the Matching Order will be made only by the Contracting Officer only by properly written modification(s) to the Matching Order. Additional Contracting Officer's Representative(s) for other purposes as required may be designated by the Contracting Officer.

Article 34 - Matching Order Administration

Each Matching Order issued under this Agreement will identify the individuals who will administer the Matching Order.

Article 35 - Type of Matching Order

The Government anticipates awarding Matching Orders on either a labor-hour, time-and-materials or fixed-price basis or some combination thereof. Specific pricing instructions will be contained in an RSCAP.

Article 36 - Technical Direction

(a) Performance of the work under this Matching Order shall be subject to technical direction of the Contracting Officer's Representative identified in the Matching Order, and the Contracting Officer. The term technical direction includes:

- (1) Direction to the Project Transactional Counsel which assists him in accomplishing the Statement of Work; and
- (2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the scope of work covered by the Matching Order. The Contracting Officer's Representative does not have the authority to issue technical direction which

- (1) institutes additional work outside the scope of the Matching Order;
- (2) constitutes a change as defined in the "Changes" article;
- (3) causes an increase or decrease in the total Matching Order effort or time required for Matching Order performance;
- (4) alters the period of performance under the Matching Order;
- (5) interferes with the Project Transactional Counsel's right to perform the terms and conditions of the Matching Order; or
- (6) changes any of the other express terms or conditions of the Matching Order.

(c) All technical directions should be issued in writing by the COR for the applicable Matching Order, time permitting. When a short turnaround is required, the COR may issue technical directions orally. Any oral direction shall be followed by written direction within 24 hours.

(d) The Project Transactional Counsel shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed in this article and within his/her authority under the provisions of this article. If, in the opinion of the Project Transactional Counsel, any instruction or direction by the COR falls within one of the categories defined in paragraph (b)(1) through (b)(6) above of this article, the Project Transactional Counsel shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instructions or direction and shall request the Contracting Officer to modify the Matching Order accordingly. Upon receiving the notification from the Project Transactional Counsel, the Contracting Officer shall:

(1) Advise the Project Transactional Counsel in writing within 30 days after receipt of the Project Transactional Counsel's letter that the technical direction is within the scope of the Matching Order effort and does not constitute a change under the "**Changes**" article of the Matching Order;

(2) Advise the Project Transactional Counsel within 30 days after receipt of the Project Transactional Counsel's letter not to perform under the direction and cancel the direction; or

(3) Advise the Project Transactional Counsel in writing within a reasonable time that DOE will issue a written modification to the Matching Order.

(e) A failure of the Project Transactional Counsel and the Contracting Officer to agree that the technical direction is within the scope of the Matching Order, or a failure to agree upon the Matching Order action to be taken with respect thereto shall be subject to the provisions of the Article entitled "**Disputes.**"

Article 37 - Nonpersonal Services

The services to be provided under each Matching Order are nonpersonal services. It is understood and agreed that the Project Transactional Counsel and its employees, subcontractors, and consultants :

1. Shall perform the services specified herein as independent contractors, not as employees of the Government,
2. Shall be responsible for their own management and administration of the work required, and bear sole responsibility for complying with all technical, schedule, or financial requirements or constraints attendant to the performance of each Matching Order,
3. Shall be free from any direct or indirect supervision or control by any Government employee; however,
4. Shall, pursuant to the government rights under Articles such as "**Inspection and Acceptance**" and "**Key Personnel,**" comply with such general direction of

authorized Government employees as is necessary and appropriate to ensure accomplishment of the contract requirements and objectives.

Each employee of the Project Transactional Counsel must be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or who presents other evidence from the U.S. Citizenship and Immigration Services that employment will not affect his/her immigration status.

Article 38 - Quality Assurance System

In the conduct of the work performed on the Matching Orders placed under this Agreement, the Project Transactional Counsel agrees to establish and/or maintain an acceptable quality assurance system. If requested by the Contracting Officer, a quality assurance plan shall be submitted to DOE for approval. Any subcontracts or consulting agreements in support of the work under a Matching Order shall require subcontractors and consultants to comply with the Project Transactional Counsel's quality assurance system.

Article 39 - Changes

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this Matching Order in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the time required for, performance of any part of the work under this Matching Order, whether or not changed by such written order, the Contracting Officer shall make an adjustment in the delivery schedule, and shall modify the Matching Order.

(c) The Project Transactional Counsel must assert its right to an adjustment under this article within 30 days from the date of receipt of the written order.

(d) Failure to agree to any adjustment shall be a dispute under the “**Disputes**” article. However, nothing in this article shall excuse the Project Transactional Counsel from proceeding with the Matching Order as changed.

Article 40 - Record Retention and Access to Records

(a) Recordkeeping

Legal Consultants must keep records related to the Agreement for a period of six (6) years after submission of its SCAP in response to a given RSCAP, except for records related to an audit,

claim, or dispute that begins but does not reach its conclusion within the Agreement period, which must be kept until the matter is resolved and final action taken.

Project Transactional Counsel must keep records related to this Matching Order for one (1) year after the guaranteed portion of the Guaranteed Obligation (as defined in Section 609.2 of the Final Regulations) (the "Retention Period) is paid in full, except for records related to an audit, claim, or dispute that begins but does not reach its conclusion by the end of the Retention Period, which must be kept until the matter is resolved and final action taken.

(b) Access

The DOE Contracting Officer, the DOE Inspector General, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to books, documents, papers, or other records of the Legal Consultant and Project Transactional Counsels that are pertinent to the Agreement or Matching Order in order to perform audits. Such audit, examination, or access shall be performed at reasonable times during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

Article 41 - Special Conflicts of Interest Obligation under Matching Order

Prior to the issuance of a Matching Order, each Project Transactional Counsel will be required to execute a conflicts of interest and nondisclosure acknowledgement. This acknowledgement will contain a special conflicts of interest obligation such as the following:

Each Project Transactional Counsel to DOE on a project will provide in writing an agreement not to perform any work for any of the Project Sponsors and/or Borrower identified in the Matching Order, and any of its affiliates or corporate divisions, that relates to services being performed under the Matching Order, until the earlier of (a) approval of such work by the Contracting Officer or (b) two (2) years after (i) the completion of the work required by the Matching Order or (ii) the termination of a Matching Order.

For the term of the loan guarantee agreement for a given project, at no point shall Project Transactional Counsel undertake any representation that would preclude it from, or be in direct conflict with, representing DOE on such project.

The Project Transactional Counsel to DOE on a project providing specialized legal services to DOE pursuant to a Matching Order shall generally not perform work on behalf of any party, other than DOE, in connection with any other project for which DOE may evaluate (including services in connection with an Application or prospective Application), has evaluated, or has issued a loan guarantee. However, the Project Transactional Counsel may work for such an entity and/or its affiliates if (1) the Project Transactional Counsel's work for that entity and/or its affiliates is unrelated to the services provided under its existing Matching Order with DOE; (2) the Project Transactional Counsel obtains a

waiver of conflicts from that entity and/or its affiliate; and (3) the Project Transactional Counsel obtains written approval of the Contracting Officer prior to accepting such work.

Article 42 - Organizational Conflicts of Interest Representation

The Project Transactional Counsel warrants that, to the best of its knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest (“OCI”) or that the Project Transactional Counsel has disclosed all such relevant information.

The Project Transactional Counsel agrees that if an actual or potential OCI is discovered after award, the Project Transactional Counsel shall make a full disclosure in writing to the Contracting Officer. The disclosure shall include a mitigation plan describing actions the Project Transactional Counsel has taken or proposed to take, to avoid, mitigate, or neutralize the actual or potential conflict. Changes in the Project Transactional Counsel’s relationships due to mergers, consolidations or any unanticipated circumstances may create an unacceptable organizational conflict of interest might necessitate such disclosure.

DOE reserves the right to review and audit OCI mitigation plans as needed after award, and to reject mitigation plans if the OCI, in the opinion of the Contracting Officer cannot be avoided, or mitigated.

The Contracting Officer may terminate this Matching Order for convenience in whole or in part, if it deems such termination necessary to avoid an OCI. If the Project Transactional Counsel was aware of a potential OCI prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate this Matching Order for default, debar the Project Transactional Counsel from government contracting, or pursue such other remedies as may be permitted by law or this Matching Order.

The Project Transactional Counsel further agrees to insert provisions which shall conform substantially to the language of this article in any subcontract, consultant or teaming agreement hereunder.

Article 43 - Confidentiality

A Project Transactional Counsel may be required to access confidential or proprietary business, technical, or financial information belonging to the U.S. Government or other entities, including the Project Sponsor and/or Borrower. Each Project Transactional Counsel is subject to the following obligation of nondisclosure of confidential information:

1) Under a Matching Order, a Project Transactional Counsel may be required to access confidential or proprietary business, technical, or financial information belonging to the U.S. Government or other entities. Such information shall be treated as confidential and the Project Transactional Counsel agrees not to appropriate such information to its own use or disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- Information which, at the time of receipt, is in the public domain; Information which is published after receipt or otherwise becomes part of the public domain through no fault of the Project Transactional Counsel;
- Information which the Project Transactional Counsel can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the U.S. Government or other entities; Information which the Project Transactional Counsel can demonstrate was received by it from a third party who did not require the Project Transactional Counsel to hold it in confidence.

2) The Project Transactional Counsel shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each of its employees, subcontractors and/or consultants, permitted access, whereby the employee, subcontractor and/or consultant agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Project Transactional Counsel's organization directly concerned with the applicable Matching Order.

3) The Project Transactional Counsel agrees, if requested by DOE, to sign an agreement identical, in all material respects, to the provisions of this article, with each entity supplying information to the Project Transactional Counsel for purposes of an applicable Matching Order, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Project Transactional Counsel shall supply DOE with reports itemizing information received as confidential or proprietary and setting forth the entity or entities from which the Project Transactional Counsel received such information.

4) The Project Transactional Counsel agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by the Project Transactional Counsel.

5) The Project Transactional Counsel further agrees to insert provisions which shall conform substantially to the language of this article in any subcontract, consultant or teaming agreement hereunder

Article 44 - Data Rights

Each Matching Order will contain specific work requirements and deliverables, subject to the rights in data obligations as follows:

1) Definitions

“Data” means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software and information of a commercial or financial nature received from third parties. The term does not include information incidental to administration of a Matching Order, such as financial, administrative, cost or pricing or management information for the Matching Order.

“Unlimited Rights” means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

“Proprietary Data” means data developed at private expense and that embody trade secrets, or are commercial or financial and confidential or privileged.

2) DOE shall have:

- (a) Unlimited Rights in all Data delivered under a Matching Order, and in all Data first produced in the performance of a Matching Order, except as provided in paragraph 3) of this article for copyright and except as provided with respect to Proprietary Data;
- (b) The right to limit exercise of claim to copyright in Data first produced in the performance of this Matching Order, and to obtain assignment of copyright in such Data, in accordance with subparagraph 3)(a) of this article;
- (c) The right to limit the release and use of certain Data in accordance with paragraph 4) of this article; and
- (d) The right to have all Data first produced or specifically used in the performance of a Matching Order delivered to DOE, either as the Contracting Officer may from time to time direct during the performance of the Matching Order or upon completion or termination of the Matching Order.

3) Copyright

- (a) Data first produced in the performance of this Matching Order:
 - (i) The Project Transactional Counsel agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any Data first produced in the performance of a Matching Order.
 - (ii) If DOE desires to obtain copyright in Data first produced in the performance of a Matching Order, the Contracting Officer may direct the Project Transactional Counsel to establish, or authorize the establishment of claim to copyright in such Data and to assign, or obtain the assignment of, such copyright to DOE or its designated assignee.

4) Release and Use Restrictions

Except as otherwise specifically provided for in a Matching Order, the Project Transactional Counsel shall not use for purposes other than the performance of a Matching Order, nor shall the Project Transactional Counsel release, reproduce, distribute, or publish any Data first produced or specifically used in the performance of the Matching Order, nor authorize others to do so, without written permission of the Contracting Officer.

5) Indemnity

The Project Transactional Counsel shall indemnify DOE and its officers, agents, and employees acting for DOE against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this Matching Order; or any libelous or other unlawful matter contained in such Data.

6) Right to Inspect

The Project Transactional Counsel agrees, except as may be otherwise specified in a Matching Order for specific Data items listed as not subject to this provision, that the Contracting Officer or an authorized representative may, up to three (3) years after acceptance of all items to be delivered under the Matching Order inspect at the Project Transactional Counsel's facility any Data used in the performance of the Matching Order and not delivered.

7) Restrictive Markings

The Project Transactional Counsel agrees that to the extent it receives or is given access to Data necessary for the performance of a Matching Order and which contain restrictive markings, the Project Transactional Counsel shall treat the Data in accordance with such markings. It is recognized that the Project Transactional Counsel will be given access to Data by DOE that is considered to be confidential or proprietary by the provider. The Project Transactional Counsel will use its best efforts to identify in Data delivered to DOE, Data first produced by the Project Transactional Counsel that embodies and discloses such Data of a provider.

Article 45 - Notification of Changes

(a) Definitions. "Contracting Officer," as used in this article, does not include any representative of the Contracting Officer. "Contracting Officer's Representative ("COR")," as used in this article, means any person the Contracting Officer has so designated by written notice which shall refer to this subparagraph and shall be issued to the designated representative before the COR exercises such authority.

(b) Notice. The primary purpose of this article is to obtain prompt reporting of Government conduct that the Project Transactional Counsel considers to constitute a change to this Matching Order. Except for changes identified as such in writing and signed by the Contracting Officer, the Project Transactional Counsel shall notify the Contracting Officer in writing promptly, within 15 calendar days from the date that the Project Transactional Counsel identifies any Government conduct (including actions, inactions, and written or oral communications) that the Project Transactional Counsel regards as a change to the Matching Order terms and conditions. On the basis of the most accurate information available to the Project Transactional Counsel, the notice shall state –

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Project Transactional Counsel official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communications involved in such conduct; and
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose.

Article 46 - Incorporation of Project Transactional Counsel's Statement of Capability, Availability, and Price

The Project Transactional Counsel's Statement of Capability, Availability, and Price (SCAP), dated _____ is made part of this Matching Order. In the event of any inconsistency between the provision of this Matching Order and the Project Transactional Counsel's SCAP, the Matching Order provisions take precedence.

Article 47 - Subcontract Consent

A subcontract means any contract or agreement entered into by a subcontractor with a Project Transactional Counsel to furnish supplies or services for performance of the Matching Order. The Contracting Officer's consent is required for all subcontracts. In proposing a subcontractor the Project Transactional Counsel shall include a description of the proposed subcontract, the identity of the proposed subcontractor including the proposed personnel, and a price proposal. Prior to entering into a subcontract the Project Transactional Counsel shall ensure that all of the articles of this Matching Order and the Agreement which contain a requirement for inclusion of such articles in applicable subcontracts are included within the subcontract (altered when necessary for proper identification of the contracting parties). Prior to the award of any proposed subcontract the subcontractor shall submit the required Organizational Conflicts of Interest disclosures and representations to the DOE Contracting Officer. The Contracting Officer will provide written notice to the Project Transactional Counsel of his/her decision.

Article 48 - Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

(a) The Government suspends or debars contractors to protect the Government's interests. The Project Transactional Counsel shall not enter into any subcontract or consulting agreement with a subcontractor or consultant that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Project Transactional Counsel shall require each proposed first-tier subcontractor and consultant, to disclose to such Project Transactional Counsel, in writing, whether as of the time of award of the subcontract or consulting agreement, the subcontractor, consultant or any of their principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Project Transactional Counsel shall notify the Contracting Officer, in writing, before entering into a subcontract or consulting agreement with a party that is debarred, suspended, or proposed for debarment. The notice must include the following:

- (1) The name of the subcontractor or consultant;
- (2) The Project Transactional Counsel's knowledge of the reasons for the subcontractor or consultant's being in the Excluded Parties List System;
- (3) The compelling reason(s) for doing business with the subcontractor or consultant notwithstanding its inclusion in the Excluded Parties List System; and

(4) The systems and procedures the Project Transactional Counsel has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor or consultant in view of the specific basis for the subcontractor or consultant's debarment, suspension, or proposed debarment.

Article 49 - Services of Consultants

Prior to entering into a consulting agreement with a proposed consultant the Project Transactional Counsel will obtain and furnish to the Contracting Officer information concerning the need for and selection of such consultant services. In addition, the Project Transactional Counsel shall comply with the same requirements as identified in **Article 47 - Subcontract Consent**. No work shall be performed by any consultant prior to the Contracting Officer's reviewing and clearing the consultant for any Organizational Conflicts of Interest.

Article 50 - Key Personnel

(a) The Project Transactional Counsel shall assign to this Matching Order the following key personnel:

Name	Title
_____	_____
_____	_____
_____	_____

(b) During the first 90 days of performance, the Project Transactional Counsel shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Project Transactional Counsel shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90 day period, the Project Transactional Counsel shall submit the information required by paragraph (c) below to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Project Transactional Counsel shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Project Transactional Counsel within 15 calendar days after receipt of all required information of the decision on the substitutions. This article will be modified to reflect any approved changes of key personnel.

Article 51 - Bankruptcy

In the event the Project Transactional Counsel enters into proceedings relating to its bankruptcy, whether voluntary or involuntary, the Project Transactional Counsel agrees to furnish, by certified mail or electronic commerce method authorized by the Matching Order, written notification of its bankruptcy to the Contracting Officer responsible for administering the Matching Order. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed. This obligation remains in effect until final payment is made under any Matching Order.

Article 52 - Disputes

- (1) This Matching Order is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601 - 613).
- (2) All disputes arising under or relating to this Matching Order shall be resolved under this article.
- (3) Claim, as used in this article, means a written demand or written assertion by a Project Transactional Counsel seeking as a matter of right, the non-monetary adjustment or interpretation of contract terms, or other non-monetary relief arising or relating to this Matching Order.
- (4) A claim by the Project Transactional Counsel shall be made in writing and must be submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against a Project Transactional Counsel shall be subject to a written decision by the Contracting Officer. The Contracting Officer shall render a written decision within 60 days after the request.
- (5) If a claim by a Project Transactional Counsel is submitted to the Contracting Officer or a claim by the Government is presented to the Project Transactional Counsel, the parties, by mutual consent, may agree to use alternative dispute resolution ("ADR"). If the Project Transactional Counsel refuses an offer for ADR, the Project Transactional Counsel shall inform the Contracting Officer, in writing, of the Project Transactional Counsel's specific reasons for rejecting the offer.
- (6) The Contracting Officer's decision shall be final unless the Project Transactional Counsel appeals or files suit as provided in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-603).
- (7) The Project Transactional Counsel shall proceed diligently with performance of this Matching Order, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to this Matching Order, and comply with any decision of the Contracting Officer.

Article 53 - Termination for Convenience or Cause

Termination for the Government's Convenience. The Government reserves the right to terminate this Matching Order, or any part thereof, for its sole convenience, including if a Sponsor Payment Letter is not executed or if the Project Sponsor or Borrower fails to make payment of fees and expenses under a Sponsor Payment Letter.

Termination for Cause. The Government may terminate this Matching Order, or any part hereof, for cause or of any default by the Project Transactional Counsel or if the Project Transactional Counsel fails to comply with any Matching Order terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. The Project Transactional Counsel shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for cause, such termination shall be deemed a termination for convenience.

* * *

Due to the no cost nature of the Matching Order, the Government does not owe the Project Transactional Counsel any amounts due under a Sponsor Payment Letter if the Matching Order is terminated for either cause or convenience. In the event of such termination, the Project Transactional Counsel shall, at the Contracting Officer's notification, immediately stop all work hereunder and shall immediately cause any and all of its consultants/subcontractors to cease work and agree to return all property and material provided by the Government within 30 days of such notification from the Contracting Officer. The termination of a Matching Order shall not automatically discharge any obligations that the parties of the Sponsor Payment Letter may have incurred under the terms and conditions of their Sponsor Payment Letter, and any amounts outstanding in respect of services rendered by the Project Transactional Counsel to DOE prior to the date of such termination by DOE for cause or convenience shall be due and payable to the Project Transactional Counsel by the Project Sponsor and/or Borrower in accordance with the terms of the Sponsor Payment Letter.

Article 54 - Protest After Award

(a) Upon receipt of a notice of protest or a determination that a protest is likely, the Contracting Officer may, by written order to the Project Transactional Counsel, direct the Project Transactional Counsel to stop performance of the work called for by this Matching Order. The order shall be specifically identified as a stop-work order issued under this article. Upon receipt of the stop-work order, the Project Transactional Counsel shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the stop-work order as provided in the Termination for Convenience or Cause article of this Matching Order.

(b) If a stop-work order issued under this article is canceled either before or after a final decision in the protest, the Project Transactional Counsel shall resume work. The Contracting Officer shall adjust the delivery schedule and the Matching Order shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for the performance of any part of this Matching Order; and

(2) The Project Transactional Counsel asserts its right to an adjustment within 30 days after the end of the period of work stoppage.

(c) If a stop-work order is not canceled and the work covered by the Matching Order is terminated for the convenience or cause, in accordance with **Article 53 - Termination for Convenience or Cause**, due to the no cost nature of the Matching Order, the Government does not owe the Project Transactional Counsel any amounts due under a Sponsor Payment Letter.

(d) The Government's rights to terminate this Matching Order at any time are not affected by action taken under this article.

(e) If, as the result of the Project Transactional Counsel's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this Matching Order is sustained, and the Government pays costs, the Government may require the Project Transactional Counsel to reimburse the Government the amount of such costs.

Article 55 - Additional Requirements for Specific Matching Orders

The Government may include additional provisions or requirements in addition to those included within the Agreement and that are specific to a given Matching Order. Legal Consultants and Project Transactional Counsel shall be responsible for reviewing each RSCAP and Matching Order.

Article 56 – Professional Responsibility

The relationship established between DOE and a Project Transactional Counsel under a Matching Order shall be an attorney-client relationship pursuant to which DOE shall be entitled to all the benefits and protections afforded to a client under the professional rules and ethical obligations applicable to such Project Transactional Counsel (collectively, "Professional Rules"). Nothing in the Invitation, the Instrument of Agreement, Sponsor Payment Letter, or Matching Order shall reduce or modify any Professional Rule or shall constitute a waiver of any attorney-client privilege or of any conflict under any Professional Rule with respect to the representation of DOE under a Matching Order, except as expressly set forth therein.

Attachment A

Statement of Work

DOE will seek advisory services from Legal Consultants with senior level experience to serve as Project Transactional Counsel. Project Transactional Counsel, under the direction and supervision of DOE's Office of General Counsel, will advise DOE on various legal aspects of projects of potential interest to DOE, including, but not limited to, projects in the following energy or energy-related sectors:

- Renewable energy systems, particularly focusing on one (1) or more of the following technologies:
 1. biomass technologies
 2. geothermal technologies
 3. solar technologies
 4. wind and hydropower technologies
- Advanced fossil energy technology, including coal gasification meeting certain Title XVII requirements (e.g., emission levels)
- Hydrogen fuel cell technology (e.g., residential, industrial or transportation applications)
- Advanced nuclear energy facilities
- Carbon capture and sequestration practices and technologies (e.g., agricultural and forestry practice that store and sequester carbon)
- Efficient electrical generation, transmission, and distribution technologies
- Efficient end-use energy technologies
- Production facilities for fuel efficient vehicles (e.g., hybrid and advanced diesel vehicles)
- Pollution control equipment
- Refineries, meaning facilities at which crude oil is refined into gasoline.

The Project Transactional Counsel will perform, or cause to be performed work in the following areas on behalf of DOE or at the direction of DOE:

Work Area 1 Review of Loan Guarantee Application

- Review and advise DOE on all documents related to the project and necessary to implement DOE actions in response to a given application (the "Transaction Documents"), including the Project Sponsor's application, project documents, debt financing or loan documents, loan guarantee agreement, security documents, legal opinions, any applicable funding documents, including in connection with the Federal Financing Bank, if applicable, third-party contracts and all other documents pertinent to the project, as well as all applicable statutes and regulations.

- Draft and deliver to DOE at the request of DOE memoranda describing all project documents reviewed, identifying all material issues identified therein; analyzing such issues; and, if appropriate, explaining how such issues were or could be addressed, mitigated or resolved.

Work Area 2 Legal Advisory Services/Due Diligence

- Provide legal advice and assistance to DOE related to all aspects of underwriting, structuring, documenting, financing and implementation of complex financing transactions in the energy and energy-related industry sectors described above in Section C in this Part I.
- Provide legal advice and expertise in the following practice areas as may be needed from time to time: corporate; debt financings, particularly project finance; contracts; tax; bankruptcy and debt restructuring; secured transactions; inter-creditor arrangements; real estate; mortgage banking; energy law; environmental law; and intellectual property; and employment and labor.
- Analyze legal issues, including compliance with applicable statutory, regulatory, contractual and policy requirements in connection with DOE's consideration and evaluation of a Project Sponsor's pre-application or application and its impact on DOE's financial and programmatic interests.
- Undertake due diligence review of the Project Sponsor and other key parties that is customary in areas including but not limited to any material agreements related to the project, corporate formation and governance documents, material litigation, regulatory approvals.
- Provide counsel, or cause counsel to be provided, on all matters of local law, local security documentation, or jurisdiction-specific legal issues such as local land use, permitting, tax and real property laws and effectuate security interests contemplated; advise DOE and prepare documentation that may be required in connection with all local law matters, including tax matters arising out of the project.
- Consult promptly with DOE on all material, policy, legal and DOE-specific issues that may arise in the course of the project.
- Review Project Sponsor and third-party legal opinions and related correspondence, documents, pleadings, filings and other representations on issues arising from projects or proposed projects.
- Draft and deliver to DOE from time to time at the request of DOE and, in any event, prior to the financial closing date, a "due diligence" memorandum, describing all project documents reviewed, identifying all material issues identified therein; analyzing such issues; and, if appropriate, explaining how such issues were or could be addressed, mitigated or resolved.

Work Area 3 Draft and Participate in Negotiations of Legal Documents

- As requested and required by DOE, draft all applicable Transaction Documents for a project.
- As requested and required by DOE, participate and represent DOE in all aspects of project documentation and negotiations.

Work Area 4 Closing

- Draft closing documents and certificates as required; prepare closing checklists; negotiate opinions of counsel to other project participant, which shall be delivered to DOE at closing; and assist DOE in the closing on the loan guarantee agreement.
- Draft and deliver to DOE prior to execution by DOE of its loan guarantee agreement and/or closing or disbursement (as may be appropriate in the context of the project) a closing opinion in form and substance satisfactory to DOE, regarding the satisfaction of conditions precedent to closing or disbursement, as the case may be.

Work Area 5 Post-Closing

- Provide to DOE in electronic form all documents and closing certificates signed by DOE and other parties and all other relevant materials.
- Handle, under the supervision of DOE, all post-closing issues, including further disbursements, consents, amendments, waivers and drafting an “operational memorandum” for delivery to DOE post-closing that summarizes, among other items, the project and corporate structure, such as the collateral, and all principal Transaction Documents, identifying the parties, describing payment terms and dates, outlining all reporting obligations to DOE; summarizes funding mechanisms; contains a time table as to disbursement/funding conditions, etc., as well as all other items required by DOE to assist it in loan monitoring and credit review.
- Provide DOE with counsel and representation on legal matters arising with respect to a project for so long as any loan guarantee issued to such project remains outstanding.

With respect to all of the foregoing work areas, Project Transactional Counsel shall provide DOE with oral and written analysis, advice and recommendations, including briefs, memoranda and letters to support opinions on issues analyzed and evaluated in the performance of work performed under a Matching Order.

Attachment B
Sample Sponsor Payment Letter

[SPONSOR LETTERHEAD]

[Date]

[Law Firm Name]

[Address]

[City/State/Zip]

Attn.: [Contact]

RE: Sponsor Payment Letter for services in connection with the proposed [Describe project] (the “Project”)

Ladies and Gentlemen:

We understand that the Project requires the engagement of outside legal counsel to assist the U.S. Department of Energy’s (“DOE”) Office of the General Counsel (“OGC”) as project specific transactional counsel (“Project Transactional Counsel”). For these purposes, we understand that DOE has developed a competitive process to select Project Transactional Counsel to provide specialized legal services to OGC on various legal aspects of projects for which completed loan guarantee applications have been submitted to DOE. We understand that as a result of a competitive selection process, DOE selected your firm as Project Transactional Counsel for the Project and has issued Matching Order # XXX.

We, as the borrower and/or project sponsor, will be responsible for paying all fees of and expenses associated with DOE’s outside legal counsel and to pay a retainer to such outside counsel, in connection with your representation of DOE in the Project. DOE will proceed with evaluating and processing our loan guarantee application only upon our entering into this Sponsor Payment Letter with your firm which has been selected by DOE to provide services to DOE on the Project. DOE may stop work on, or reject, our loan guarantee application if we fail to comply with the provisions of this Sponsor Payment Letter. We acknowledge that the fees and expenses incurred by Project Transactional Counsel, its subcontractors and consultants in connection with services you and they render to DOE shall only be payable, directly or indirectly through Project Transactional Counsel, by [Names of the Sponsors] (together the “Project Sponsors,” each a “Project Sponsor”) and/or the borrower, under all circumstances, without recourse to DOE by the Project Transactional Counsel, any of its subcontractors and/or consultants, Project Sponsor, or borrower. DOE will not be responsible for any of the fees and expenses of Project Transactional Counsel, its subcontractors and/or consultants, in each case, attributable to representing DOE in connection with the Project, including post-closing issues

and DOE requirements, and the Project Transactional Counsel agrees that the Project Transactional Counsel shall look only to us, the Project Sponsor and/or borrower, for payment of such fees and expenses.

Accordingly, as the Project Sponsor and/or borrower, we hereby agree to promptly pay all fees and expenses charged by the Project Transactional Counsel and, as applicable, its subcontractors and/or consultants. We acknowledge our obligation to pay all fees and expenses of the Project Transactional Counsel and, as applicable, its subcontractors and/or consultants, whether or not DOE's loan guarantee for the Project is provided, and/or whether incurred prior to the date hereof, pre-closing or post-closing. We acknowledge that DOE will not be responsible for any fees and expenses incurred by the Project Transactional Counsel, its subcontractors and/or consultants that are related to the Project and that you and your subcontractors and consultants shall have no expectation of payment from DOE for any of the services that you or any of your subcontractors and/or consultants render, or related expenses you, as Project Transactional Counsel, or any of your subcontractors and/or consultants incur in connection with the Project.

As Project Sponsor and/or borrower, we hereby agree to promptly pay all fees and expenses charged by your firm and, upon your request, your subcontractors and consultants. We will pay a retainer to Project Transactional Counsel in the amount of \$_____ and replenish the retainer upon notification by your firm. Our understanding is that your fees will be based upon your hourly rates as reflected in Attachment A and on the time your firm actually devotes to this particular matter as reflected in your invoices.

You will focus your efforts on those tasks required by DOE to achieve its objectives, and that you will closely coordinate your efforts with OGC. In order to afford us the opportunity to confirm that you are working efficiently and coordinating your efforts, we request that you provide OGC statements identifying in detail the work performed by task or document, as applicable, during the relevant period, the total time billed therefore by each attorney and by firm, as well as aggregate amounts incurred to date. Upon DOE verification of the completeness and correctness of these statements, we request you submit these statements along with your monthly invoices to us.

We anticipate receiving your monthly invoices. We acknowledge that all fees and expenses represented by such invoices are due on presentation thereof, including at closing, and that the correctness and completeness of the fees and expenses invoiced shall be determined through the statements submitted to and verified by DOE. In addition, please forward all monthly statements and invoices directly to DOE prior to submission to us so that the statements and invoices may be reviewed with a view to possible redaction of privileged attorney-client information.

We understand that notwithstanding our payment obligation to you with regard to the services rendered and expenses incurred as Project Transactional Counsel, the attorney-client relationship is solely between DOE and, your firm and any other counsel or consultants subcontracted or retained by your firm in connection with the Project. There shall be no inference of

confidentiality, fiduciary, or other client relationship between your firm and us, the Project Sponsor and/or borrower, as a result of this letter, and we specifically disavow any such relationship with you, as Project Transactional Counsel, and any of your other counsel or subcontractors and/or consultants. We will also not interfere with DOE's relationship with you.

In addition to legal fees, we will pay or reimburse you for the expenses listed in Attachment B that you or your other counsel or subcontractors and/or consultants incur in connection with the Project. We ask that your statements and invoices identify the types of these expenses in reasonable detail.

We acknowledge that this letter shall be subject to review and approval for the purposes of assuring that DOE is not in any way liable for the payment of any fees and expenses. We also acknowledge that the parties to this Sponsor Payment Letter agree that they will not amend, modify, alter, or change in any way this Sponsor Payment Letter without DOE's prior consent.

Please sign and return a copy of this letter to confirm your understanding of, and agreement with, the foregoing.

Very truly yours,

[NAME OF SPONSOR]

By: _____

Name:

Title:

ACCEPTED AND AGREED:

[NAME OF FIRM]

By: _____

Name:

Title:

Attachments

cc: Contracting Officer, U.S. Department of Energy